

No. 784

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

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GUY N. STOCKSLAGER,

*Plaintiff in Error.*

vs.

THE UNITED STATES OF AMERICA.

*Defendant in Error.*

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TRANSCRIPT OF RECORD.

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Upon Writ of Error to the United States District Court  
for the District of Alaska, Second Division.

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FILMER BROTHERS CO. PRINT, 424 SANSOME STREET, S. F.

FILED

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*In the United States District Court for the District of  
Alaska, Second Division.*

UNITED STATES OF AMERICA,

vs.

GUY N. STOCKSLAGER,

Defendant.

**Order Extending Time to Docket Cause.**

Now, on motion of Key Pittman, Esq., counsel for the defendant, and good cause appearing therefor, it is hereby ordered that the time allowed herein to file the transcript on appeal and writ of error in the above-entitled cause be and the same hereby extended so that the defendant shall have until and including the 21st day of December, 1901, wherein to file in the clerk's office of the Circuit Court of Appeals for the Ninth Circuit in San Francisco, California, the transcript and record in the above-entitled cause.

JAMES WICKERSHAM,

District Judge.

[Endorsed]: Filed in the Office of the Clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. October 29, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

No 1441.

Nome, Alaska, October 29, 1901.

Office of Clerk of U. S. Court.

District of Alaska, Second Division.

Received from Key Pittman fifty cents, account of  
 Cert. of Extension in re U. S. vs. Stockslager No. 123  
 Crim.

50c.

H. G. STEEL,

Clerk of United States District Court.

Per Reber.

United States District Court,  
 District of Alaska, Second Division. } ss.

I, H. G. Steel, clerk of the United States District  
 Court for the District of Alaska, Second Division, do  
 hereby certify that I have compared the foregoing copy  
 with the original order extending time in which to file  
 transcript on appeal in the case of United States of  
 America vs. Guy N. Stockslager, now on file and of rec-  
 ord in my office at Nome, in the District of Alaska, and  
 that the same is a true and perfect transcript of said  
 original and of the whole thereof.

Witness my hand and the seal of said Court, this 29th  
 day of October, A. D. 1901.

[Seal]

H. G. STEEL,

Clerk.

By H. C. Gordon,

Deputy.



[Endorsed]: No. 784. In the United States Circuit Court of Appeals for the Ninth Circuit. Guy N. Stockslager, vs. The United States of America. Order Extending Time to Docket Cause. Filed December 18, 1901. F. D. Monckton Clerk.

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**Citation (Original).**

UNITED STATES OF AMERICA—ss.

The President of the United States to Joseph K. Wood, District Attorney for the District of Alaska, Second Division, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, State of California, on the 21st day of November, 1901, pursuant to a writ of error filed in the clerk's office of the District Court for the United States, Second Division of Alaska, wherein Guy N. Stockslager is plaintiff and the United States of America is defendant in error, to show cause if any there be why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness, the Honorable James Wickersham, Judge of the United States District Court for the District of Alaska, Second Division, this 23d day of October, 1901.

JAMES WICKERSHAM,

Judge of the United States District Court for the District of Alaska, Second Division.

Personal service of the foregoing citation is hereby acknowledged this 23d day of October, 1901.

JOHN L. MCGINN,

United States Assistant District Attorney for District of  
Alaska, Second Division.

[Endorsed]: No. 123 Crim. United States District Court, District of Alaska. United States, Plaintiff, vs. Guy N. Stockslager Defendant. Citation. Filed in the Office of the Clerk of the United States District Court, Alaska, Second Division at Nome, Alaska, October 23, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

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Writ of Error (Original).

UNITED STATES OF AMERICA—ss.

The President of the United States of America to the  
Honorable James Wickersham, Judge of the United  
States District Court for the District of Alaska,  
Second Division, Greeting:

Because in the records and proceedings, as also in the rendition of a judgment of a plea which is in the said District Court, before you, between the United States of America, plaintiff, and Guy N. Stockslager, defendant, a manifest error hath happened, to the great prejudice and damage of the said defendant, Guy N. Stockslager, as is said and appears by the plaintiff herein.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to

the party aforesaid in his behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, together with this writ, so as to have the same at the said place in said Circuit Court on the 21st day of November, 1901, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 22d day of October, 1901.

Attest my hand and seal of the United States District Court for the District of Alaska, Second Division, at the clerk's office in the town of Nome, on the day and year last above written.

[Seal]

H. G. STEEL,

Clerk of the United States District Court, Alaska, Second Division.

By Harry C. Gordon,

Deputy Clerk.

Service of a true copy of the within writ of error is hereby accepted this 22d day of October, 1901.

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Attorney for United States.

[Endorsed]: No. 123 Crim. United States District Court, District of Alaska. United States, Plaintiff, vs. Guy N. Stockslager, Defendant. Writ of Error. Filed in the Office of the Clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. October 23, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

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*In the United States District Court for the District of  
Alaska, Second Division.*

THE UNITED STATES, }  
   } *vs.* }  
 GUY N. STOCKSLAGER, }

**Caption.**

Be it remembered that on the 5th day of October, A. D. 1901, the following proceedings were had in the above entitled cause:

The grand jury thereupon came into open court, and upon their names being called they all responded in person. They, thereupon, through their foreman, W. B. Goodrich, presented therein indictments against parties now in custody, as follows: One against Otto Lange for assault with intent to kill. And one against Guy N. Stockslager for forgery. Also indictments for larceny against three persons not in custody, and whose names together with the indictments against them, the Court directed to be withheld from the public for the present which indictment was in words and figures as follows:

*District Court for the District of Alaska, Division No. Two.*

THE UNITED STATES OF AMER-  
ICA. }  
vs. }  
GUY N. STOCKSLAGER.

**Indictment.**

Guy N. Stockslager is accused by the grand jury of the District of Alaska, Division No. Two, by this indictment of the crime of forgery committed as follows: The said Guy N. Stockslager, on the 28th day of July, 1901, in the District aforesaid, did willfully, knowingly, and feloniously utter and publish as true and genuine to one Frank Johnson a certain false and forged writing and check, the tenor, purport and effect whereof is as follows:

Nome City, Alaska. July 26th 1901, No. .  
THE ALASKA BANKING AND SAFE DEPOSIT CO.

Pay to Guy N. Stockslager, or bearer, \$100.00—one hundred—dollars.

CABELL WHITEHEAD.

And indorsed thereon the following: Guy N. Stockslager.

He, the said Guy N. Stockslager, then and there well knowing the same to be false and forged, with intent to injure and defraud, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Dated at Nome in the District aforesaid the 30th day of September, nineteen hundred and one.

JOSEPH K. WOOD,  
District Attorney.

By John L. McGinn,  
Assistant.

Witnesses examined before the grand jury:

CABELL WHITEHEAD.

[Endorsed]: No. 123. Criminal. District Court United States, District of Alaska, Second Division. The United States vs. Guy N. Stockslager. Indictment. Forgery. A true bill. Foreman, W. E. Goodrich. Joseph K. Wood, United States Attorney. John L. McGinn, Assistant. Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. Oct. 5, 1901. H. G. Steel, Clerk. By H. C. Gordan, Deputy Clerk. Recorded page 112. C. A. B.

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### Arraignment.

Be it remembered that on the 5th day of October, A. D. 1901, the following proceedings were had:

And then, upon motion of United States Assistant Attorney McGinn, the marshal was directed to forthwith bring into court Otto Lange and Guy N. Stockslager for arraignment, upon the two indictments heretofore this day presented and filed against them.

And then came into open court, in custody of the United States marshal, Otto Lange and Guy N. Stocks-

lager for arraignment upon the indictments heretofore presented and filed against them this day.

The defendant Guy N. Stockslager was then told to stand up and was arraigned and asked if his true name was Guy N. Stockslager, to which he replied that it was. He was then asked if he had any attorney to which he replied that his attorney was Mr. Pittman, whereupon the indictment heretofore returned against him this day charging him with the crime of forgery was read to him and a copy thereof handed him, and he was given until October 7, 1901, at 10 o'clock A. M. in which to plead to said indictment.

And thereupon the said defendants Otto *Lundgren* and Guy N. Stockslager were remanded to the custody of the marshal to be returned to jail.

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### **Order Continuing Time to Plead.**

Be it further emembered that on the 7th day of October, A. D. 1901, the following proceedings were had:

Defendant in open court and by his attorney, Key Pittman. At request of defendant's attorney, Pittman, the time to plead was put over until October 8, 1901, at 10 o'clock A. M.

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### **Order Denying Motion, Overruling Demurrer and Plea.**

Be it further remembered that on the 8th day of October, A. D. 1901, the following proceedings were had:

Defendant in open court in person and by his attorney, Mr. Pittman. Hearing upon defendant's motion to set

aside indictment and upon demurrer to indictment. Key Pittman for motion and demurrer. Assistant United States Attorney. McGinn, contra.

Motion to set aside indictment denied and demurrer to indictment overruled, to both of which rulings defendant excepts. Defendant's motion as above with affidavits in support thereof, and defendant's demurrer filed by Mr. Pittman. And defendant Guy N. Stockslager thereupon in person in open court pleads not guilty to the indictment herein charging him with the crime of forgery, which said motion was in words and figures as follows:

*In the District Court for the District of Alaska, Second  
Alaska, Second Division.*

THE UNITED STATES OF AMERICA,	)
Plaintiff,	
vs.	)
GUY N. STOCKSLAGER,	)
Defendant.	

### **Motion to Set Aside Indictment.**

Comes now the defendant by his attorneys, J. P. Hauser and Pittman & Fink, and moves the Court to set aside the indictment against the defendant herein filed, on the following grounds, to wit:

#### **I.**

That the court in which indictment is entitled and filed has no authority to receive it.



II.

That no legally constituted grand jury found said indictment.

III.

That the Honorable James L. Wickersham, Judge in the above-entitled court, had no legal authority or jurisdiction to call and impanel the alleged grand jury that found the pretended indictment herein.

IV.

That said alleged grand jury had no legal authority to inquire into the crime charged, or to find an indictment on said charge or any other charge against said defendant.

V.

That no special or regular term of the above-entitled court was convened and pending at the time when said grand jury was called, impaneled and sworn in or when they found and presented the indictment herein.

This motion is based on the affidavit of Key Pittman on file herein and the records and files of the above-entitled court.

J. P. HAUSER and  
PITTMAN & FINK,  
Attorneys for Defendant.

[Endorsed on the back as follows:] No. 123. United States District Court, District of Alaska. United States of America, Plaintiff, vs. Guy N. Stockslager, Defendant. Motion to set aside indictment. Filed in the office of the clerk of the U. S. District Court, Alaska, Second Division, at Nome, Alaska. Oct. 8, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

And which said demurrer to indictment heretofore referred to is in the words and figures as follows:

*In the United States District Court for the District of  
Alaska, Second Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUY N. STOCKSLAGER,

Defendant.

**Demurrer.**

Comes now the defendant by his attorneys J. P. Hauser and Pittman & Fink and demur to the indictment on file herein, and for cause of demurrer say:

1.

That said indictment does not substantially conform with the requirements of chapter 7 of title 2 of an act entitled "An act to define and punish crimes in the District of Alaska, and to provide a code of criminal procedure for said District."

2.

The facts stated in said indictment do not constitute a crime.

J. P. HAUSER and

PITTMAN & FINK,

Attorneys for the Defendant.

Service of the above is hereby accepted this 8th day of October, 1901.

JOHN L. MCGINN,

Assistant United States Attorney.

[Endorsed on the back as follows]: 123. District Court, District of Alaska, Second Division. United States of America, Plaintiff, vs. Guy N. Stockslager, Defendant. Demurrer. Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. Oct. 11, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

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**Trial.**

Be it further remembered that on the 10th day of October, A. D. 1901, the following proceedings were had:

UNITED STATES }  
vs. }  
STOCKSLAGER. }

Called for trial. Defendant in court in person and by his attorney, Mr. Key Pittman.

Assistant United States Attorney McGinn appearing for the prosecution.

A jury composed of the following persons was impaneled and sworn to try the issues in this case: J. Joseph King, Ralph Sheafe, N. T. Cory, J. B. Hensel, Wm. Green, C. W. Canine, S. S. Allison, Harry Dobson, John Haines, Fred Johnson, Lee Overman and C. J. Eckstrom.

All of the above persons except King, Sheafe, and Cory were called from the by-standers.

And then the further trial of this case was suspended. The jurors received the usual admonition not to talk

about the case and were excused until 1:30 o'clock this afternoon, and retired in charge of B. J. Dwyer and bailiff heretofore sworn to take charge of them for the coming in of the jury in the case of *Golding vs. Hensel*.

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**Trial (Resumed).**

Be it further remembered that on the 10th day of October, 1901, the following proceedings were had:

UNITED STATES }  
 vs. }  
 STOCKSLAGER. }

Trial resumed. Defendant in court in person and by his attorney, Mr. Pittman.

The jury in this case were called and all answered to their names in person.

Mr. McGinn opened the case for the prosecution to the jury, followed by Mr. Pittman for the defendant.

Frank Johnston sworn as a witness for the prosecution, whereupon Mr. Pittman requests that the Court's charge to the jury be in writing.

Direct examination of Mr. Johnston by Mr. McGinn, who offers in evidence the alleged forged writing set forth in the indictment. Its introduction is objected to by Mr. Pittman, whose objection is overruled and an exception allowed. The paper introduced is marked "Plaintiff's Exhibit A." Cross-examination by Mr. Pittman.

W. H. Merrill then sworn as a witness for the prosecution. Direct examination by Mr. McGinn. No cross-examination.

Frank Johnston then recalled for the prosecution by Mr. McGinn, and in his presence and hearing the check in question was read to the jury.

Cabell Whitehead then sworn for the prosecution. Direct examination by Mr. McGinn. No cross-examination.

Thereupon the prosecution rests.

Mr. Pittman for the defendant then moves the Court that the jury be instructed to return a verdict of acquittal for the defendant upon the ground that there is absolutely no evidence tending to prove any forged instrument by the party here charged.

Request denied by the Court, and exception allowed.

The defendant Guy N Stockslager is then sworn as a witness on his own behalf. Direct examination by Mr. Pittman. Cross-examination by Mr. McGinn.

Thereupon the defendant rests.

And then at 2:45 P. M., a recess was taken in order that the Court might prepare its instructions to the jury.

Court convened at 3:20 o'clock P. M.

All court officials present as before recess.

The trial of the case of Guy N. Stockslager resumed.

Defendant in court in person and by his attorney, Mr. Pittman.

List of trial jurors called. All answered present. Defendant's attorney requests instructions which are filed. Assistant United States Attorney McGinn addresses the jury on behalf of the prosecution, followed by Mr. Pittman for the defendant, and in turn by Mr. McGinn.

Thereupon the jurors received the charge of the Court, and retired to deliberate upon their verdict in charge of D. R. Dwyer theretofore sworn to take charge of them.

Mr. Pittman asked that the records show that the defendant before the jury retired took exceptions to the instructions given by the Court, and the Court directed that the minutes so show.

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### Trial (Resumed).

Be it further remembered that on October 10th, 1901, the following proceedings were had:

Instructions by the Court to the jury filed. Thereupon a recess was taken until ten o'clock to-morrow morning October 11, 1901, subject to the Court remaining open to receive the verdict in the case of United States vs. Stockslager.

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### Trial (Resumed).

The Court convened at 6:25 P. M. to receive the verdict of the jury in the case of United States vs. Guy N. Stockslager. All court officials present as at prior sessions. The defendant in court in person and by his attorney, Mr. Pittman.

The jurors were called and each answered present. On being asked if they had agreed upon a verdict, they replied through their foreman, J. Joseph King, that they had, and thereupon presented their verdict in words and figures following:

*In the United States District Court in and for the District of  
Alaska, Second Division.*

UNITED STATES OF AMERICA,

vs.

GUY N. STOCKSLAGER,

Defendant. }

**Verdict.**

We, the jury in the case of the United States of America against Guy N. Stockslager, defendant, do find the defendant guilty as charged in the indictment, and strongly recommend him to the mercy of the Court.

J. J. KING,

Foreman.

[Endorsed on the back as follows]: No. 123. In the United States District Court, for the District of Alaska, Second Division. United States of America vs. Guy N. Stockslager. Verdict. Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. Oct. 10th, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

*In the United States District Court for the District of  
Alaska, Second Division.*

UNITED STATES OF AMERICA,	} Order No. —.
Plaintiff,	
vs.	
GUY N. STOCKSLAGER,	} Order No. —.
Defendant.	

**Order Extending Time to File Bill of Exceptions.**

This matter coming up for hearing this 17th day of October, A. D. 1901, on motion, Key Pittman of counsel for the defendant,

It is hereby ordered that the defendant be, and is hereby, allowed further ten days from date, wherein to file his proposed bill of exceptions in the above-entitled case.

**JAMES WICKERSHAM,**

Judge of the United States District Court of Alaska, Second Division.

O. K.

**JOHN L. MCGINN,**

Assistant United States Attorney.

[Endorsed]: Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska, October 17, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.



### **Order Denying Motion for New Trial, etc.**

Be it further remembered that on the 11th day of October, A. D. 1901, the following proceedings were had :

And then came the defendant in open court, and filed in writing a motion for a new trial, which motion was denied. Whereupon defendant's counsel took an exception.

Whereupon defendant being in open court in person and by his attorney, Key Pittman, Esq., filed with the clerk of the court his motion for arrest of judgment, presented the same to the Court, and whereupon forthwith said motion was denied, and the defendant took an exception.

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### **Proceedings.**

Be it further remembered that on the 17th day of October, A. D. 1901, the following proceedings were had : Exceptions and instructions filed and order allowing time to file exceptions also filed, and thereupon a recess was taken until to-morrow morning at 10 o'clock.

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### **Sentence.**

Be it further remembered that on the 21st day of October, 1901, the following proceedings were had :

Defendant in court in person and by his attorney, Mr. Pittman. Upon motion of Assistant United States Attorney McGinn the defendant was called up for sentence upon the verdict of "guilty" heretofore rendered against

him. The sentence and judgment of the Court was pronounced that the defendant be imprisoned in the United States Penitentiary at McNeill's Island, in the State of Washington, for the period of three years, and he was thereupon remanded to the custody of the United States marshal to see that the above sentence was carried into effect.

---

*In the United States District Court, District of Alaska,  
Second Division.*

UNITED STATES OF AMERICA,

vs.

GUY N. STOCKSLAGER,

Defendant. }

### Judgment.

The above-named defendant having heretofore, on the 10th day of October, 1901, been duly found guilty, by the verdict of a jury in this court, of the crime of forgery, and being now before the bar of the Court,

It is ordered and adjudged by the Court that said Guy N. Stockslager is guilty of the crime of forgery, as found by the jury, and that he be imprisoned in the United States Penitentiary at McNeill's Island, in the State of Washington, for the period of three years from twelve o'clock of this day, or until discharged by law. Said defendant is hereby remanded to the custody of the United States marshal to carry into effect the judgment of this Court.

Done in open court at Nome, Alaska, this 21st day of October, A. D. 1901.

JAMES WICKERSHAM,  
Judge.

[Endorsed]: Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska, October 22, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

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*In the United States District Court for the District of Alaska,  
Second Division.*

UNITED STATES OF AMERICA

vs.

GUY N. STOCKSLAGER.

**Assignment of Errors.**

Be it remembered that on the 22d day of October, A. D. 1901, the following proceedings were had:

Comes now Guy N. Stockslager, the defendant in the above-entitled action, by Pittman & Fink, his attorneys, and assign certain errors as having been committed upon the trial and in the proceedings in the above-entitled action, upon which said errors the said Guy N. Stockslager intends to rely upon his writ of error to the United States Court of Appeals for the Ninth Circuit, as follows:

## ASSIGNMENT OF ERRORS.

1st. The Court erred in overruling the defendant's motion to set aside the indictment, which said motion was overruled in the forenoon of the 8th day of October, 1901.

2d. The Court erred in overruling the defendant's demurrer to the indictment, which said demurrer was overruled in the forenoon of the 8th day of October, 1901.

3d. The Court erred in overruling the defendant's motion for a nonsuit, and that the Court instruct the jury to find a verdict of not guilty for the defendant, which said motion was made in the afternoon of the 10th day of October, 1901, and after all the evidence on behalf of the United States had been introduced and the prosecution rested, and before any evidence was introduced on behalf of the defendant, and forthwith overruled.

4th. The Court erred in overruling the defendant's motion in arrest of judgment, which said motion was made and overruled in the forenoon of the 11th day of October, 1901.

5th. The Court erred in overruling the defendant's motion for a new trial, which said motion was made and overruled in the forenoon of the 11th day of October, 1901.

6th. The Court erred in overruling the objection of defendant to the question asked the witness Frank Johnson, on his direct examination, with reference to the money witness lent defendant, as follows: "Mr. MCGINN. —Q. State to the jury how you came to let him have it, and what he gave you as security."

7th. The Court erred in overruling the objection of the defendant to the question asked the witness Frank Johnson on his direct examination, as follows: "Q. (Mr. McGINN.) What was the name signed to the check?"

8th. The Court erred in overruling the defendant's objection to the admission in evidence of the check and exhibit, marked "Plaintiff's Exhibit A," which said check was admitted in evidence and read to the jury while Frank Johnson, the first witness for the prosecution, was on the stand.

9th. The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 1, which reads as follows:

1. The defendant is charged with the crime of uttering and publishing a forged check with intent to injure and defraud one Frank Johnson.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction number two, which reads as follows:

2. The uttering and publishing of a forged instrument is an independent offense from forgery of an instrument.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 3, which reads as follows:

3. The uttering and publishing of a forged instrument consist in the delivery of such instrument to another for value with the intention that the same shall be put in circulation and an intention thereby to injure and defraud.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 4, which reads as follows:

4. The essential elements of the crime charged are:

1st. That the instrument alleged to have been uttered and published be a forgery;

2d. That the defendant knew said instrument to be a forgery at the time of uttering and publishing;

3d. That the defendant actually uttered and published said instrument;

4th. That the defendant at the time of uttering and publishing said instrument, intended to defraud thereby;

And it is incumbent upon the prosecution to prove each and all of said essential elements, not only by preponderance of the evidence, but beyond a reasonable doubt, or it is your duty to acquit the defendant.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 5, which reads as follows:

5. To constitute the offense of uttering and publishing a forged instrument there must be an intention to injure and defraud.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 6, which reads as follows:

6. The intention to defraud is the essence of the crime of uttering and publishing a forged instrument, and the mere passing of such instrument without such fraudulent intention does not constitute the crime.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 7, which reads as follows:

7. The passing of a forged instrument to another, not for gain, or with intent to defraud, even though it is so passed with intent to deceive, does not constitute the crime charged against the defendant in the indictment herein.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 8, which reads as follows:

8. The intention to defraud must be proved.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 9, which reads as follows:

9. For the purpose of determining the intent of the accused in uttering and publishing said check to said Frank Johnson, you may take into consideration all the circumstances attending the passing of said check, the conduct and acts of the accused relative to said check and prior to the passing of the same as herein charged; the statement of the accused at and prior to the passing of said check.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 10, which reads as follows:

10. The defendant is presumed to be innocent until the guilt is established by such evidence as will exclude every reasonable doubt; therefore the law requires that no man shall be convicted of a crime until each and every one of the jury is satisfied by the evidence in the case, to the exclusion of every reasonable doubt, that the defendant is guilty as charged. So in this case if the jury entertain any reasonable doubt as to whether the

defendant had an intent to defraud the said Frank Johnson in the uttering of said check, if he uttered it, they shall acquit him.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 11, which reads as follows:

11. If any one of the jury, after having duly considered all the evidence, and after having consulted with his fellow jurymen, should entertain such reasonable doubt, the jury cannot, in such case, find the defendant guilty.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 12, which reads as follows:

12. A reasonable doubt may be defined to be a doubt arising from the candid and impartial investigation of all the evidence, and such as in the graver transactions of life would cause a reasonable and prudent man to hesitate and pause.

The Court erred in refusing to instruct the jury as requested by the defendant in his instruction numbered 13, which reads as follows:

13. You are the sole judges of the facts, the credibility of the witnesses, and of the weight that should be given to the testimony of each witness.

You should carefully consider the testimony of each witness and after you have done so, give to it that weight which you think it is justly entitled to in the light of all the facts and circumstances in this case.

You will be slow to believe any witness has testified falsely, but if you do believe any witness has testified



falsely as to any material fact in this case, then you will be at liberty to disregard the whole of the testimony of such witness, except in so far as the same may be corroborated by other facts and circumstances occurring at the trial.

The Court erred in that portion of its instruction to the jury wherein it attempted to define a reasonable doubt, said instruction being as follows:

You are instructed that in considering the case you are not to go beyond the evidence to hunt up doubts. A doubt to justify an acquittal must be reasonable, that is, it must be one from which a good reason can be given, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that were the same connected with the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty; if, after considering all the evidence, you can say you have an abiding conviction of the truth of the charge against this defendant, as contained in the indictment, you are then satisfied beyond a reasonable doubt and should find him guilty."

The Court erred in instructing the jury as follows:

"If you shall find and believe from the evidence in this case beyond a reasonable doubt that the defendant personally wrote, made, and signed the check, and affixed thereto the name of Cabell Whitehead, without his consent, authority or permission, and that his act in so doing was not thereafter, and before the check was passed to anyone else, ratified or assented thereto by Cabell Whitehead, then I must instruct you that it was false and forged."

The Court erred in instructing the jury as follows:

“To utter a check is to pass or deliver it to any other person; to publish it is to make it known or exhibit or deliver it to another. If you shall find from the evidence in this case beyond a reasonable doubt that the defendant in this case did, at the time and place mentioned in the indictment, knowingly and intentionally deliver the said check to Frank Johnson, and procured the said Johnson to accept the same, and that Johnson, relying upon the check, presented it to the bank for payment, then you should find that he knowingly uttered and published it.”

The Court erred in instructing the jury as follows:

“If you shall find from the evidence beyond a reasonable doubt that he uttered and passed the check upon Johnson with intent to deceive him, and did obtain money on it, and that Johnson, relying upon the check, presented it to the bank for payment, then you may infer from that act an intention to injure the said Johnson or Whitehead, and if you shall find from all the evidence in the case beyond a reasonable doubt that the check was so uttered with intent to obtain money upon it, you should find that he did utter and publish the said check with an intent to injure or defraud.”

Wherefore, the defendant prays that said judgment may be reversed, and that he may be restored to all things that he has lost thereby, and that he may be awarded a new trial.

KEY PITTMAN,  
Attorney for Defendant.

*In the United States District Court for the District of Alaska,  
Second Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUY N. STOCKSLAGER,

Defendant.

**Petition for Writ of Error and Order Allowing the Same.**

The defendant in the above-entitled action, feeling himself aggrieved by the judgment made and entered therein, comes now by Key Pittman, Esq., and Albert Fink, Esq., his counsel, and prays the Court to allow him a writ of error from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, as by the laws of the United States made and provided, and prays that an order be made fixing the amount of security to be given by him upon said writ of error.

KEY PITTMAN,  
Counsel for Defendant.

On the 23d day of October, 1901, in open court, it is hereby ordered that the foregoing petition be, and the same is hereby, granted, and it is ordered that the writ of error prayed for therein be allowed and the bond for costs to be given by the plaintiff in error is hereby fixed at \$500 dollars.

JAMES WICKERSHAM,  
Judge of the District Court, Second Division, District of  
Alaska.

[Endorsed]: Filed in the office of the Clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. October 23, 1901. H. G. Steel, Clerk. H. C. Gordon, Deputy Clerk.

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### Writ of Error (Copy).

UNITED STATES OF AMERICA—ss.

The President of the United States of America to the Honorable James Wickersham, Judge of the United States District Court for the District of Alaska, Second Division, Greeting:

Because in the records and proceedings, as also in the rendition of a judgment of a plea which is in the said District Court before you, between the United States of America, plaintiff, and Guy N. Stockslager, defendant, a manifest error hath happened, to the great prejudice and damage of the said defendant, Guy N. Stockslager, as is said and appears by the petition herein.

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in his behalf, do command you if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, together with this writ, so as to have the same at the said place in said Circuit Court on the 21st day of November, 1901, that the record and proceedings aforesaid being inspected, the said Circuit

Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 22d day of October, 1901.

Attest my hand and seal of the United States District Court for the District of Alaska, Second Division, at the clerk's office in the town of Nome, on the day and year last above written.

[Seal] H. G. STEEL,  
Clerk United States District Court, Alaska, Second  
Division.

By Harry C. Gordon,  
Deputy.

[Endorsed]: The within copy of writ of error lodged in the clerk's office of the United States District Court for the District of Alaska, Second Division, for defendant in error this 22d day of October, 1901.

H. G. STEEL,  
Clerk of United States District Court, District of Alaska,  
Second Division.

By Harry C. Gordon,  
Deputy Clerk.

Filed in the office of the Clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska, October 23, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

*In the United States District Court for the District of Alaska,  
Second Division.*

UNITED STATES OF AMERICA,

Plaintiff, )

vs.

GUY N. STOCKSLAGER,

Defendant. )

**Bond on Writ of Error.**

Know all men by these presents that we, Guy N. Stockslager, as principal, and Frank W. Smith and Humboldt Gates, as sureties, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America, or its assigns, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 22d day of October, 1901.

Whereas, the above-named defendant has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of conviction made and entered in the above-entitled action in the District Court for the District of Alaska, Second Division.

Now, therefore, the condition of this obligation is such that if the above-named Guy N. Stockslager shall prosecute said writ to effect and answer all costs if he shall

fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

GUY N. STOCKSLAGER,

By his Attorney,

KEY PITMAN.

FRANK W. SMITH.

HUMBOLDT GATES.

United States of America, }  
District of Alaska. } ss.

Humboldt Gates and Frank W. Smith, being each first duly sworn, deposes and says that he is a resident within the District Court of Alaska, and is worth the sum of five hundred dollars, over and above all liabilities and exclusive of property exempt from execution.

HUMBOLDT GATES.

FRANK W. SMITH.

Subscribed and sworn to before me this 22d day of October, A. D. 1901

[Seal]

KEY PITTMAN,

Notary Public in and for the District of Alaska, at Nome.

This bond is approved this 22d day of October, 1901.

\_\_\_\_\_,  
Judge District Court, District of Alaska, Second Division.

The foregoing bond is approved this 23d day of October, 1901.

JAMES WICKERSHAM.

Judge District Court, District of Alaska, Second Division.

Approved:

J. L. McGINN,  
Assistant United States Attorney.

[Endorsed]: Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. October 25, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

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*In the United States District Court, for the District of Alaska,  
Second Division.*

UNITED STATES OF AMERICA,	}
Plaintiff,	
vs.	
GUY N. STOCKSLAGER,	}
Defendant.	

**Bill of Exceptions.**

Be it remembered, that on the 8th day of October, A. D. 1901, at 10 o'clock A. M., the following proceedings were had:

And then came Key Pittman, of counsel for the defendant Guy N. Stockslager, and moved the Court to set



aside the indictment, against the defendant Stockslager, on the grounds set forth in his written motion, which motion is in words and figures as follows:

Comes now the defendant, by his attorneys J. P. Hauser and Pittman and Fink, and moves the Court to set aside the indictment against the defendant herein filed; on the following grounds, to wit:

I.

That the Court in which indictment is entitled and filed has no authority to receive it:

II.

That no legally constituted grand jury found said indictment:

III.

That the Honorable James Wickersham, Judge in the above-entitled Court, had no legal authority or jurisdiction to call and impanel the alleged grand jury, that found the pretended indictment herein:

IV.

That said alleged grand jury had no legal authority to inquire into the crime charged, or to and an indictment on said charge or any other charge against said defendant:

V.

That no special or regular term of the above-entitled Court was convened and pending at the time when said grand jury was called, impaneled and sworn in, or when they found and presented the indictment herein.

This motion is based on the affidavit of Key Pittman on file herein and the records and files of the above-entitled court.

J. N. HAUSER, and  
PITTMAN & FINK,  
Attorneys for Defendant.

Service of a true copy of the within motion is hereby accepted this 8th day of October, 1901.

JOHN L. MCGINN,  
Assistant Attorney for United States.

[Endorsed]: No. 123. Crim. Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. October 8, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

Be it further remembered, that on the 8th day of October, 1901, the following proceedings were had:

And then came Key Pittman, of counsel for the defendant, and presented to the Court the affidavit of Key Pittman and the exhibits thereto attached in support of defendant's motion to set aside the indictment, which said affidavit and attached exhibits are in words and figures as follows:

*In the United States District Court for the District of  
Alaska, Second Division.*

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. )  
GUY N. STOCKSLAGER, )  
Defendant. )

**Affidavit in Support of Motion to Set Aside Indictment.**

United States of America, }  
District of Alaska. } ss.

Key Pittman, being first duly sworn, on oath, deposes and says:

That he is one of the attorneys for defendant in the above-entitled action. That he has carefully examined the records and files of the above-entitled court, and that the following and attached orders, notices, returns of officers and minutes of the Court are true and correct copies of the original orders, notices, returns, and files now a part of record in the above-entitled court.

KEY PITTMAN.

Subscribed and sworn to before me this 8th day of October, 1901.

[Notary Seal]

LEWIS GARRISON,

Notary Public in and for the District of Alaska, at Nome.

*In the United States District Court for the District of  
Alaska, Second Division.*

In the Matter of the Special August }  
Term at Unalaska. }

### Order for Holding Special Term.

It appearing to this Court that it is necessary to hold a special term thereof for the discharge of the business of a distant portion of the District, and it appearing that under the provisions of section 4 of an act of Congress approved June 6th, 1900, the Attorney General of the United States has directed that a special term of this court be held at Unalaska in this District, and that the necessary notice thereof be given.

It is now ordered that a special term of this court be held at Unalaska, to begin on the 19th day of August, 1901; and

It is further ordered that the clerk of this court give immediate notice thereof by posting at least three public notices, one to be posted at Nome; one to be posted at St. Michaels, and another to be posted at a prominent place in the said town of Unalaska, which notices shall be posted at least thirty days prior to the said 19th day of August, 1901, and the United States marshal of this District is hereby instructed to provide a suitable courtroom and facilities for holding said term of court at Unalaska, and have the same in readiness in August for holding the said term of court.

Dated at Nome, July 5th, 1901.

ARTHUR H. NOYES,  
District Judge, Alaska.

*In the United States District Court, for the District of  
Alaska, Second Division.*

In the Matter of a Special August Term }  
at Unalaska. }

**Notice of Holding Special Term.**

Notice is hereby given that in pursuance of the provisions of section 4 of the act of Congress approved June 6th, 1900, and in pursuance of the directions of the Attorney General of the United States, a special term of the United States District Court for the District of Alaska will be held at Unalaska, in said District, to begin on the 19th day of August, 1901, and to continue for such time as there may be business there to transact.

This notice is given in compliance with an order of the United States District Court, for the District of Alaska, 2d Division, signed by the Honorable Arthur H. Noyes, Judge thereof, on the 5th day of July, 1901.

In witness whereof I have hereunto set my hand and the seal of said court this 5th day of July, 1901.

GEO. V. BORCHSENIUS,  
Clerk of the United States District Court, for the District  
of Alaska, 2d Division.

By Jas. W. Bell,  
Deputy.

[On the back of this instrument appears the following endorsement]:

“Notice of holding special term of court at Unalaska. Filed in the U. S. District Court, District of Alaska, 2d Division, July 8, 1901,

GEO. V. BORCHSENIUS,  
Clerk.

Harry C. Gordon,  
Deputy.”

[Here follows copy of preceding notice, with return thereon, as follows]:

“United States District Court,  
District of Alaska,  
Second Division. } ss.

John H. Robinson, being first duly sworn, deposes and says, that he posted a copy of the within notice of which the annexed is a true copy, in the most conspicuous place in the town of St. Michaels, Alaska, where the same would be most likely to attract the attention of the general public, on the 13th day of July, A. D. 1901, in accordance with the directions of the Court as set out in said notice.

JOHN H. ROBINSON.

Subscribed and sworn to before me this 13th day of July, 1901.

[Seal of Court]

FRED T. MERRITT,  
Deputy Clerk.”

[On the back of said instrument appears the following endorsement]:

“Notice of holding a special term of court at Unalaska. Proof of posting at St, Michaels. Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska, August 10, 1901.

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy Clerk.”

[Here follows same notice with following return thereon]:

“J. R. Richards being first duly sworn, deposes and says: that he posted a copy of the within notice, of which the annexed is a true copy in the most conspicuous place in the town of Unalaska, Alaska, where the same would be most likely to attract the attention of the general public, on the 12th day of July, 1901, in accordance with the directions of the Court set out in said notice.

J. R. RICHARDS.

Subscribed and sworn to before me by J. R. Richards this 12th day of July, 1901.

R. H. WHIPPLE,

Commissioner for the Second Division, District of Alaska,  
at Dutch Harbor.”

[Endorsed on the back as follows]: Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska, August 16, 1901.

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy Clerk.

[Here follows same notice with return thereon as follows]:

“United States District Court,  
 District of Alaska,  
 Second Division. } ss.

James W. Bell being duly sworn, deposes and says, that he posted a copy of the within notice, of which the annexed is a true copy, in the most conspicuous place in the town of Nome, Alaska, where the same would be most likely to attract the attention of the general public, on the 5th day of July, 1901, in accordance with the directions of the Court as set out in said notice.

JAS. W. BELL.

Subscribed and sworn to before me this —— day of July, 1901.

HARRY C. GORDON,  
 Deputy Clerk.”

[The following endorsement appears on the back thereof]:

“Order for special term at Unalaska, and proofs posting notice in Nome, Dutch Harbor, and St. Michaels, of special term of court at Unalaska.

Filed in the United States District Court, District of Alaska, Second Division, July 8, 1901.

GEO. V. BORCHSENIUS,  
 Clerk.

H. C. Gordon,  
 Deputy.”



*In the United States District Court, for the District of  
Alaska, Second Division.*

In the Matter of Drawing Grand Jurors  
for the Special Term of Court at Unalaska, District of Alaska.

**Order to Draw Jury, etc.**

To H. G. Steel, Clerk of said court, and to W. M. Cribbs,  
United States Jury Commissioner:

You are hereby commanded to draw from the United States jury box the names of sixteen persons to serve as grand jurors at the special term of the United States District Court, to be holden at Unalaska, District of Alaska, on the 19th day of August, A. D. 1901, and you, the said H. G. Steel, are further commanded to issue to the United States marshal of said district a venire for the jurors so drawn returnable on the 19th day of August, 1901, at the hour of 11 A. M. at Unalaska in said District of Alaska, and deliver the same forthwith to the United States marshal of said district.

Dated this 16th day of August, A. D. 1901.

**JAMES WICKERSHAM,**

Judge of the United States District Court, District of  
Alaska, Second Division.

[The following endorsement appears upon back of said instrument]:

“United States District Court, for the District of  
Alaska, Second Division. In the matter of drawing grand

jurors for the special term of court at Unalaska, District of Alaska. Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska, August 16th, 1901.

H. G. STEEL,  
Clerk.

By H. C. Gordon,  
Deputy Clerk."

### Minute Entries.

[Minutes of the United States District Court, District of Alaska, Second Division, for the special term of court begun at Unalaska August 19th, 1901, in said Division, appears the following words and figures]:

"It appearing to the Court that of special venire heretofore on the 16th day of August, 1901, issued to the United States marshal for said District and Division, directing him to summon as grand jurors sixteen persons to be in attendance upon this court at 11 A. M. on the 19th day of August, 1901, at Unalaska, it has been impossible to locate and serve a sufficient number of persons to serve as such jurors, the Court ordered that to complete the panel of such jurors an open venire issue to the said United States marshal directing him to summon from the bystanders and citizens then present to be in attendance as grand jurors before this court at 11 o'clock this A. M., whereupon an order to that effect was forthwith made and entered as follows:

[Here follows order.]

[And in said minutes of said date and of said court also appears the following]:

“And thereupon the list of persons summoned as grand jurors by the said marshal under the two foregoing venire was called in open court and the following were present and responded to their names: Fred Anderson, E. E. Bertram, L. W. Burrows, Alex Campbell, H. H. Dunbar, D. R. Dwyer, C. D. Folger, C. H. Hawkins, T. W. Hawkins, H. L. Jaffee, Charles Kelly, Edward Lee, W. H. Murphy, W. H. McCurdy, George A. Shea, and Cassila Shaishinkoff.

After such examination he was accepted; whereupon the following persons were duly accepted and sworn as grand jurors: Fred Anderson, E. E. Bertram, L. W. Burrows, Alex Campbell, D. R. Dwyer, C. D. Folger, C. H. Hawkins, T. W. Hawkins, H. L. Jaffee, Charles Kelly, Edward Lee, W. H. Murphy, W. H. McCurdy, George A. Shea, and Ralph D. Shelley.”

*In the United States District Court, for the District of Alaska, Second Division.*

In the Matter of the Adjournment of the  
August, 1901, Special Term from Unalaska to Nome

}  
}

**Order Adjourning Special Term.**

Good and sufficient cause appearing to the Court therefor: It is hereby ordered that the August, 1901, special term of this court beginning August 19th, 1901, and held at Unalaska, in said District and Division, be and the same is hereby adjourned to September 16th, 1901, at ten (10) o'clock in the forenoon to be then held at Nome, in said District and Division.

Done in open court at Unalaska this 10th day of September, A. D. 1901.

JAMES WICKERSHAM,  
District Judge.

[On the back of this instrument is endorsed the following]:

“In the United States District Court, for the District of Alaska, Second Division. In the matter of the adjournment of the August, 1901, special term from Unalaska to Nome. Filed in the United States District Court, District of Alaska, Second Division, Sept. 10, 1901, at Unalaska.

H. G. STEEL,  
Clerk.

By John T. Reed,  
Deputy.”

*In the United States District Court, for the District of Alaska, Second Division.*

In the Matter of Drawing Grand Jurors  
for the Special August Term, 1901,  
Nome, Alaska.

**Order to Draw Jury.**

To H. G. Steel, Clerk of said court, and to M. M. Perl  
United States Jury Commissioner:

You are hereby commanded to draw from the United States jury box in your possession the names of twenty-three persons who shall serve as grand jurors at the special August term (1901) of said court, to be holden at Nome, Alaska, on the 23d day of September, A. D. 1901, and you are hereby further directed upon the drawing of

said twenty-three names to safely seal the same and return them to the jury-box for safe keeping until such time as the Court in his discretion shall direct that a venire issue for the attendance of said grand jurors.

Done at Nome, Alaska, this 21st day of September, A. D. 1901.

JAMES WICKERSHAM,

Judge.

[On the back of said instrument is endorsed the following]:

“In the United States District Court for the District of Alaska, Second Division. In the matter of drawing grand jury for the special August term, 1901, Nome, Alaska, September 23d, 1901. Order. Filed in the office of the clerk of the United States District Court, Alaska, Second Division, Nome, Alaska, September 28, 1901.

Journal 4, page 207.

H. G. STEEL,

Clerk.

By H. C. Gordon,

Deputy Clerk.”

### Minute Entries.

[Minutes of the District Court of Alaska, for the Second Division, of the proceedings of the court on the morning of September 23, 1901, at the courthouse, Nome, Alaska, shows as follows]:

“The names of the persons heretofore and on the 21st day of September, 1901, drawn as grand jurors and mentioned in the venire issued September 21st, 1901, were called and the following answered in person”: [Here follows list of names.]

### Minute Entries.

[And the minutes of the transactions of said court on the morning of September 24th, 1901, in the courthouse, at Nome, Hon. James Wickersham, Judge, presiding, shows the following]:

“And thereupon Assistant United States Attorney McGinn examined the remaining persons as to their qualifications to serve as grand jurors, whereupon Gus Bergen was excused upon the ground that he was not a citizen, and the following persons were sworn in as grand jurors: J. V. Greenbaum, John Booth, J. R. Jarvis, John Iseman, Conrad Becker, W. E. Dickinson, G. F. Horton, Joe Ross, H. B. Foley, S. H. Stevens, Jr., Lee A. Little, G. W. Glidden, B. F. Miller, W. B. Goodrich, H. Hagen, F. B. Lazier, J. F. Palmer and W. Schranz.

The jurors were thereupon instructed by the Court as to their duties in general, and W. B. Goodrich appointed foreman; whereupon they retired for deliberation.”

### Order Overruling Motion to Set Aside Indictment.

Be it remembered, that on the 8th day of October, 1901, the following proceedings were had:

The United States being represented in court by John L. McGinn, Assistant District Attorney, and the defendant being represented by Mr. Key Pittman, the Court overruled defendant's motion to set aside the indictment. Defendant excepted.

**Order Overruling Demurrer.**

Be it remembered, that on the 8th day of October, 1901, the following proceedings were had:

The United States being represented by John L. McGinn, Assistant United States District Attorney, and the defendant being represented by Mr. Key Pittman, counsel, defendant filed and presented to the Court his said demurrer, which said demurrer was then and there overruled and defendant allowed an exception.

Be it remembered, that on the 10th day of October, 1901, the following proceedings were had:

And then came John L. McGinn, Assistant United States Attorney and stated that the Government was ready for trial in the above-entitled cause.

The defendant was present in person in open court and by his attorney, Mr. Key Pittman. The jury of twelve men was duly impaneled, and thereupon after the statement of counsel for the Government and by counsel for the defendant, the case proceeded with the introduction of evidence.

FRANK JOHNSON, a witness produced on behalf of the United States, after being first duly sworn testified as follows:

**Direct Examination.**

(By Assistant United States Attorney.)

My name is Frank Johnson, I live at 278 Front street, Nome, Alaska; I have resided in Nome since the spring of 1899; I have been acquainted with the defendant, Guy

(Testimony of Frank Johnson.)

N. Stockslager, since the winter of 1899 and 1900. Have met him several times this summer. I let him have twenty odd dollars in the month of September.

Q. (Assistant District Attorney McGINN.) State to the jury, how you came to let him have it, and what he gave you as security?

(Mr. PITTMAN.) Objected to—

The COURT.—Objection overruled.

(Mr. PITTMAN.) Exception.

A. A check, he promised to redeem it the next morning.

(Witness continuing.) He came at eight or nine o'clock the next morning and paid me the money, that he had borrowed, and I delivered the check to him. He came to me the same night and gave me the check, and I gave him ten dollars. He told me not to take the check to the bank. I needed the money and took the check to the bank to get the money.

Q. (Mr. McGINN.) I will ask you to examine this paper. Is that the check?

A. I could not swear to it.

Q. Upon what bank was it drawn?

A. On the Alaska Banking and Safe Deposit Company.

Q. What was the amount of the check?

A. One hundred dollars.

Q. What was the name signed to the check?



(Testimony of Frank Johnson.)

(Mr. PITTMAN.) Objected to as incompetent, irrelevant, and immaterial, and not the best evidence.

The COURT.—Objection overruled.

(Mr. PITTMAN.) Exception.

A. Mr. Whitehead's name was signed to it, I believe.

Q. Do you know whether or not that check was endorsed?

A. To the best of my recollection it was.

Q. What was the name that appeared on the back of the check?

A. I did not pay much attention to it, I gave it hardly a thought.

Q. I will ask you to state whether or not this is the same check?

A. Well, I have already stated that I could not say positively.

Q. What did you do with the check that was given to you by the defendant?

A. I took it to the bank.

Q. Who did you take it to?           A. The cashier.

Q. What was the cashier's name?

A. I don't know. He told me that it was forged and Mr. Whitehead gave me \$10 on the check for the amount I had advanced on the check and as I did not want to see him get into trouble I gave Mr. Whitehead back the \$10 and he took it.

Q. I offer this check in evidence.

(Testimony of Frank Johnson.)

(Mr. PITTMAN.) Objected to, as not properly identified as the check delivered to Johnson by defendant, and incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

(Mr. PITTMAN.) Exception.

(Check marked Plaintiff's Exhibit "A.")

Q. Where did this all happen, in Nome, Alaska?

A. Yes, sir.

Cross-Examination.

(By Mr. PITTMAN.)

(Mr. JOHNSON.) Mr. Stockslager has borrowed money from me before the times I have just mentioned, and paid the money back.

Q. (Mr. PITTMAN.) Did you take the check as security, for that debt or loan?

A. Well, strictly speaking I did not give it a thought, I would have given him the money any way for I knew he would pay me promptly.

(Witness continuing:) He said he would come back and take it up and for me not to present it at the bank.

Captain W. H. MERRIL, a witness produced on behalf of the United States, after being first duly sworn, testified as follows:

Direct Examination.

(By Mr. McGINN.)

My name is W. H. Merrill and I have been cashier of the bank here for a little over a year. I am not ac-

(Testimony of Captain W. H. Merrill.)

quainted with Mr. Johnson, and am not positive that I have ever seen him before, but I think I have.

Q. I will ask to examine this paper (Plaintiff's Exhibit "A.") and state whether or not you have ever seen it before?

A. I have no doubt that is the one handed me before.

Q. By whom was it presented to you?

A. I could not identify the person, I doubted the signature and I referred it to the assistant cashier and it happened that Mr. Whitehead came in at the time I told the assistant that I thought it was a forgery, and he called him and he pronounced that it was.

Q. Are you acquainted with the signature of Mr. Whitehead?           A. I am.

Q. I will ask you to state, whether or not this is his signature?           A. I would not cash a check on it.

Q. Do you know whether Frank Johnson presented this check to you?

A. I do not know; I doubted it and went to the assistant cashier and he had the same opinion as I had, that it was a forgery. I could not swear positively that it was and then as I said Dr. Whitehead came in and I had nothing more to do with it.

FRANK JOHNSON, recalled for the United States.

Mr. MCGINN.—Q. The only thing I desire is to read the note while Mr. Johnson is on the witness stand.

(Testimony of Frank Johnson.)

(Reads as follows: "Nome City, Alaska, July 26, 1901. No. blank. The Alaska Banking and Safe Deposit Co. Pay to Guy N. Stockslager or Bearer \$100 one hundred dollars. Cabell Whitehead. Endorsed on the back Guy N. Stockslager.")

CABELL WHITEHEAD, a witness produced on behalf of the United States, after being first duly sworn, testified as follows:

My name is Cabell Whitehead. I reside in Nome. I am now, and have been for two seasons, manager of the Alaska Banking and Safe Deposit Company.

Q. (By McGINN.) I'll ask you to examine Plaintiff's Exhibit "A." Is that your signature?

A. It is not.

Q. I will ask you to examine Plaintiff's Exhibit "A" and state whether or not that is his signature on the back?

A. In my opinion it is.

Q. Did you give any person authority to sign your name to that check?

A. I did not.

(Mr. WHITEHEAD.) I knew the defendant, Guy N. Stockslager seven or eight years ago in Washington, D. C.

Here the prosecution rests.

Mr. PITTMAN.—If the Court please, I move that the jury be instructed to bring a verdict of not guilty, for the reason that there is absolutely no evidence even tending to prove that there was any forged instrument passed by the defendant as charged in the indictment.

(Testimony of Guy N. Stockslager.)

COURT.—The motion will be denied.

Exception taken and allowed.

GUY N. STACKSLAGER, defendant, a witness produced on behalf of defendant, after being first duly sworn, testified as follows:

Have resided in the District of Alaska about three years. I have known Mr. Johnson since 1899. I remember the circumstances of handing Mr. Johnson a check. I needed some money, and I looked around town to see if I knew anyone I could get it from, and I took the check to Johnson and asked him to loan me twenty-five dollars. I admit that I wrote the check. I told him emphatically that I would redeem it next morning, and not to present it at the bank. I had no intention at either time of defrauding him; I just took it as a loan. I believe I could have borrowed the money without it; but I needed it at the time, and I thought I would leave the check with him, and he would let me have some money. When he gave me the ten dollars he asked me if I needed any more, but I did not accept any more. I knew I could get the money next day. The day afterwards, about two o'clock, I was arrested, and have been in jail ever since. I never seen Mr. Whitehead's signature, and made no attempt to imitate his handwriting.

Cross-Examination.

(By Mr. McGINN.)

Q. (Mr. McGINN.) Is that the check you gave Mr. Johnson?      A. It is.

(Testimony of Guy N. Stockslager.)

Q. Is that your handwriting?           A. Yes, sir.

Q. When did you write that check, on the same night?

A. Yes, sir.

Q. You carried it in your pocket for some time before presenting it the first time?

A. It was a night or two nights before. Several nights I needed some money and I expected that I could borrow some money, but happened to run across some friends and got the money.

Q. Where did you write this check?

A. In my room.

Q. Where did you live?

A. In the Raymond.

Q. When you wrote it out what did you intend to do with it?

A. The first thing I did was to show it to Mrs. Raymond and I told her I would have some money in a few days.

Q. Did you tell her you would give her this check?

A. No, I wanted to borrow some money on it.

Q. So, at the time that you wrote out this check, you intended to get some money on it?

A. No, if I thought that I would get it cashed for one hundred dollars.

Q. Why did you write it?

A. I wanted to be sure that I could get some money.

Q. So you wrote it to deceive Mr. Johnson, and to get the money?

(Testimony of Guy N. Stockslager.)

A. No, I did not want to deceive anybody; if I had I could have got a hundred dollars.

Q. You wrote the check for the purpose of getting the money and deceiving somebody?

A. No, to get some money; not to deceive anybody, but to raise some money, to borrow some money.

Q. When you went in there, you did not tell him that it was not genuine?

A. I did not tell him that it was genuine.

Q. You told him to let you have some money on the check?

A. I said I wanted to borrow twenty-five dollars, and for him to put the check in the safe.

Q. So you gave him the check for the purpose of getting twenty-five dollars?

A. You can put it that way.

Q. You got back the check?           A. I did.

Q. Then you came back and got ten dollars on it?

A. It was not a forgery; I did not tell him that it was genuine.

Q. You knew that it was not genuine?

A. I did. I did not try to defraud anyone, though. I could have got more on it if I had.

Q. You did defraud Mr. Johnson out of ten dollars. That is all.

Evidence closed.

The foregoing was the substance of all the testimony given on the trial of said cause of United States of America vs. Guy N. Stockslager.

Be it further remembered, that in due time, before the argument and before the jury were instructed, the defendant in writing requested the Court to give to the jury instructions as follows:

I.

The defendant is charged with the crime of uttering and publishing a forged check, with intent to injure and defraud one Frank Johnson.

II.

The uttering and publishing of a forged instrument is an independent offense from forgery of an instrument.

III.

The uttering and publishing of a forged instrument consist in the delivery of such instrument to another for value, with the intention that the same shall be put in circulation, and an intent thereby to injure and defraud.

IV.

The essential elements of the crime charged are:

1st. That the instrument alleged to have been uttered and published be a forgery.

2d. That the defendant knew said instrument to be a forgery at the time of uttering and publishing.

3d. That defendant actually uttered and published said instrument.



4th. That the defendant, at the time of uttering and publishing said instrument, intended to defraud thereby.

And it is incumbent upon the prosecution to prove each and all of the said essential elements, not only by preponderance of the evidence, but beyond a reasonable doubt, or it is your duty to acquit the defendant.

V.

To constitute the offense of uttering and publishing a forged instrument, there must be an intention to injure and defraud.

VI.

The intention to defraud is the essence of the crime of uttering and publishing a forged instrument, and the mere passing of such instrument, without such fraudulent intention, does not constitute the crime.

VII.

The passing of a forged instrument to another, not for gain, or with intent to defraud, even though it is so passed with intent to deceive, does not constitute the charge against the defendant in the indictment herein.

VIII.

The intention to defraud must be proved.

IX.

For the purpose of determining the intent of the accused in uttering and publishing said check to said Frank Johnson, you may take into consideration all the circumstances attending the passing of said check; the conduct and acts of the accused relative to said check and prior

to the passing of the same as herein charged; the statements of the accused at and prior to the passing of said check.

#### X.

The defendant is presumed to be innocent until the guilt is established by such evidence as will exclude every reasonable doubt; therefore the law requires that no man shall be convicted of a crime until each and every one of the jury is satisfied by the evidence in the case, to the exclusion of every reasonable doubt, that the defendant is guilty as charged. So in this case, if the jury entertain any reasonable doubt as to whether the defendant had an intent to defraud the said Frank Johnson in the uttering of said check, if he uttered it, they shall acquit him.

#### XI.

If any one of the jury, after having duly considered all the evidence, and after having consulted with his fellow jurymen, should entertain such reasonable doubt, the jury cannot, in such case, find the defendant guilty.

#### XII.

A reasonable doubt may be defined to be a doubt arising from the candid and impartial investigation of all the evidence, and such as in the graver transactions of life would cause a reasonable and prudent man to hesitate and pause.

#### XIII.

You are the sole judges of the facts, the credibility of the witnesses and of the weight that should be given to the testimony of each witness.

You should carefully consider the testimony of each witness, and after you have done so, give to it that weight which you think it is justly entitled to in the light of all the facts and circumstances of this case.

You will be slow to believe any witness has testified falsely, but if you do believe that any witness has testified falsely as to any material fact in this case, then you will be at liberty to disregard the whole of the testimony of such witness, except in so far as the same may be corroborated by other facts and circumstances occurring on the trial.

[The foregoing instrument is endorsed on the back as follows]:

United States District Court, District of Alaska.  
United States of America, Plaintiff, vs. Guy N. Stock-  
lager, Defendant. Instructions requested by defendant.  
Filed in the office of the clerk of the United States Dis-  
trict Court, Alaska, Second Division, at Nome, Alaska,  
October 10, 1901. H. G. Steel, Clerk. By  
Deputy Clerk.

Each and all of which requests were denied by the Court, and the defendant then and there excepted separately to the refusal to give each of said instructions.

The Court instructed the jury in writing as follows:

*In the United States District Court, for the District of  
Alaska, Second Division.*

UNITED STATES

vs.

GUY G. STOCKSLAGER,

Defendant. }

### Instructions to Jury.

Gentlemen of the Jury: On the trial of a criminal cause, and this is a criminal cause, the Court and jury have each important though distinct functions to perform. All questions of law must be decided by the Court, and all questions of fact shall be decided by the jury, and all evidence thereon addressed to them.

You are instructed that it is the duty of the Court to state, by way of instructions, the law applicable to the facts in the case before you, and you are instructed that the statute makes it your duty to accept as law that which the Court lays down to you in the instructions as such. You will receive the instructions of the Court as the law applicable to the case, and will be guided by them in reaching your verdict herein. You are instructed that you are the judges of the effect and value of all evidence addressed to you, but you are further instructed that your power of judging the effect of evidence is not an arbitrary one, but is to be exercised with legal discretion

and in subordination to the rules of evidence. You are instructed that you are not bound to find a verdict in conformity with the declarations of any number of witnesses, who do not produce convictions in your minds, against a lesser number, or against a presumption, or other evidence satisfying your minds. You are further instructed that the credibility of the witnesses is a question exclusively for the jury, and that where a number of witnesses testify directly opposite to each other the jury are not bound to regard the weight of the evidence as evenly balanced. The jury have a right to determine, from the appearance of the witnesses on the stand, their manner of testifying, their apparent candor and fairness, their apparent intelligence or lack of intelligence, and from all the other surrounding circumstances appearing on the trial, which witnesses are the more worthy of credit, and to give credit accordingly.

You are instructed that a witness willfully false in one part of his testimony may be distrusted in others, and if you shall believe that any witness in this case has testified willfully false in one part of his testimony, you may distrust him in other parts; you are not bound to disbelieve his statements; you may accept what you believe to be true and disregard what you believe to be false.

You are instructed that the defendant in this case is presumed to be innocent until he is proven to be guilty by the evidence in the case beyond a reasonable doubt, and it is your duty to give the defendant the benefit of the presumption in his favor, that he is innocent, until you shall be convinced by the evidence in this case beyond a reasonable doubt that he is guilty.

You are instructed that in considering the case you are not to go beyond the evidence to hunt up doubt. A doubt to justify an acquittal, must be reasonable, that is, it must be one for which a good reason can be given, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that were the same connected with the graver transactions of life it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty; if, after considering all the evidence, you can say you have an abiding conviction of the truth of the charge against this defendant, as contained in the indictment, *you then* satisfied beyond a reasonable doubt, and should find him guilty.

In the trial of a cause of this nature the defendant shall at his own request, but not otherwise, be deemed a competent witness, the credit to be given to his testimony being left solely to the jury, under the instructions of the Court. The defendant in this case has been sworn, examined and cross-examined as any other witness; you should consider his testimony as you would that of any other witness in the case, and give it such weight and credit as you think it deserves.

The defendant in this case is accused by the indictment that on the 28th day of July, 1901, in the District of Alaska, he did willfully, knowingly and feloniously utter and publish as true and genuine to one Frank Johnson a certain false or forged writing or check, the tenor of which is as follows:

“Nome City, Alaska, July 26, 1901. No. —.

THE ALASKA BANKING AND SAFE DEPOSIT CO.

Pay to Guy G. Stackslager, or bearer, (\$100.00) one hundred dollars.

CABELL WHITEHEAD.”

And endorsed thereon: “Guy G. Stackslager.”

And that he, the defendant, then and there well knowing the same to be false and forged, with intent to injure and defraud.

You are instructed that whoever shall with intent to injure and defraud anyone knowingly utter or publish as true and genuine any false and forged check is guilty of a crime and shall be punished as prescribed by the Code.

Before you can find the defendant guilty in this case as charged in the indictment you must find from the evidence beyond a reasonable doubt:

1st. That the check set out in the indictment was false and forged, that is to say that it was not the check, and made, signed and delivered to the defendant or to any other person by the drawer, Cabell Whitehead, or any one by him authorized; and if you shall find and believe from the evidence in this case beyond a reasonable doubt that the defendant personally wrote, made and signed the check and affixed thereto the name of Cabell Whitehead, without his consent, authority or permission, and that his act in so doing was not thereafter and before the check was passed to anyone else ratified or assented thereto by Cabell Whitehead, then I instruct you that it was false and forged.

2d. That he knowingly or intentionally uttered or published the check set out in the indictment. To utter a check is to pass or deliver it to any other person, to publish it is to make it known or exhibit or deliver it to another. If you shall find from the evidence in this case, beyond a reasonable doubt that the defendant in this case did at the time and place mentioned in the indictment knowingly and intentionally deliver the said check to Frank Johnson and procured the said Johnson to accept the same, and that Johnson relying upon the check, presented it to the bank for payment, then you should find that he knowingly uttered and published it.

3d. If you shall find from the evidence beyond a reasonable doubt that the defendant did knowingly utter and publish the check set out in the indictment, then before you can find him guilty you must further find from the evidence beyond a reasonable doubt that he published the same as true and genuine, that is, to say that it was the check of the person whose name is signed thereto as drawer. If you shall find from the evidence, beyond a reasonable doubt that he so knowingly uttered and published the check, that it was signed in the name of Cabell Whitehead, that he gave it to another person with intent to deceive him and obtain money on it and that he did not inform the person to whom he passed it that it was false and forged, but allowed him to believe it was the check of the drawer and that the person taking it relied upon it and presented it to the bank for payment, then you should find that he so uttered and published it as true and genuine.



4th. If you shall find from the evidence in this case beyond a reasonable doubt that the defendant did knowingly utter and publish the check set forth in the indictment, as true and genuine, still before you can convict him you must further find that he so uttered and published it with intent to injure and defraud another. And in this respect you may consider whether he had an intent to injure or defraud either the party to whom he gave the check or Cabell Whitehead. And if you shall find from the evidence, beyond a reasonable doubt, that he uttered and passed the check upon Johnson with intent to deceive him and did obtain money on it, and that Johnson relying upon the check, presented it to the bank for payment, then you may infer from that act an intention to injure the said Johnson or Whitehead, and if you shall find from all the evidence in the case beyond a reasonable doubt that the check was so uttered with the intent to obtain money upon it, you should find that he did utter and publish the said check with an intent to injure or defraud.

You are instructed that the defendant is either guilty as charged in the indictment, or he is not guilty, and your verdict should be either in one form or the other. Herewith I hand you two forms of verdict in accordance with this instruction; when you shall have retired and unanimously agreed upon your verdict you will sign the one agreed upon, by your foreman, and return it into the court as your verdict in this case.

You may now retire.

JAMES WICKERSHAM,  
District Judge.

[The back of these instructions endorsed as follows]:

No. 123. In the United States District Court for the District of Alaska, Second Division. United States vs. Guy N. Stockslager, Defendant. Instructions. Filed in the office of the clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. October 10, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

Be it further remembered that after said instructions had been given by the Court to the jury, and before their retirement to consider their verdict, the defendant took the following exceptions to said instructions: The defendant excepted to the instruction given by the Court to the jury in relation to what is reasonable doubt, which instruction is as follows:

“You are instructed that in considering the case you are not to go beyond the evidence to hunt up doubt. A doubt to justify an acquittal must be reasonable—that is, it must be one in which a good reason can be given, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that were the same connected with the graver transactions of life it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty; if after considering all the evidence you can say you have an abiding conviction of the truth of the charge against this defendant as contained in the indictment, you are then satisfied beyond a reasonable doubt and should find him guilty.”

Defendant excepts to the following instruction given to the jury:

“If you shall find and believe from the evidence in this case beyond a reasonable doubt that the defendant personally wrote, made and signed the check and affixed thereto the name of Cabell Whitehead without his consent, authority or permission and that his act in so doing was not thereafter and before the check was passed to anyone else, ratified or assented thereto by Cabell Whitehead, then I instruct you that it was false and forged.”

Defendant excepts to the following instruction given to the jury:

“To utter a check is to pass or deliver it to any other person, to publish it is to make it known or exhibit or deliver it to another. If you shall find from the evidence in this case beyond a reasonable doubt that the defendant in this case did at the time and place mentioned in the indictment, knowingly and intentionally deliver the said check to Frank Johnson, and procured the said Johnson to accept the same, and that Johnson relying upon the check, presented it to the bank for payment, then you should find that he knowingly uttered and published it.”

Defendant excepts to the following instruction given to the jury:

“If you shall find from the evidence beyond a reasonable doubt that he uttered and passed the check upon Johnson with the intent to deceive him and obtain money on it, and that Johnson relying upon the check, presented it to the bank for payment, then you may infer from that act and intention to injure the said Johnson or Whitehead, and if you shall find from all the evidence in the case beyond a reasonable doubt that the

check was so uttered with the intent to obtain money upon it, you should find that he did utter and publish the said check with the intent to injure or defraud.”

The foregoing exceptions by the defendant to the refusal of the Court to give the instructions herein set out, and the exceptions to those instructions given, were duly taken and allowed this — day of October, 1901.

\_\_\_\_\_,  
Judge of the District Court of Alaska, Second Division.

[Endorsed on the back as follows]:

No. 123. United States District Court, District of Alaska. United States of America, Plaintiff vs. Guy N. Stockslager, Defendant. Exception to Instructions. Filed in the office of the Clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. October 17, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

*In the United States District Court, for the District of Alaska,  
Second Division.*

UNITED STATES OF AMERICA,	}
Plaintiff,	
vs.	}
GUY N. STOCKSLAGER,	
Defendant.	

Be it remembered that on the 11th day of October, A. D. 1901, in the forenoon of said day, the following proceedings were had:

The government being represented in court by John McGinn, Assistant United States Attorney, and the de-

fendant by his counsel, Key Pittman, Esq., the said defendant presented, filed and made his motion in arrest of judgment, which said motion is in words and figures as follows:

*In the United States District Court, for the District of Alaska,  
Second Division.*

UNITED STATES OF AMERICA,	}
Plaintiff,	
vs.	
GUY N. STOCKSLAGER,	}
Defendant.	

**Motion in Arrest of Judgment.**

Comes now the defendant by his attorneys, J. P. Hauser and Pittman & Fink, and moves the Court for an order in arrest of judgment on the verdict in the above-entitled action, upon the following grounds:

1. No indictment was found against the defendant by any legal grand jury of the Second Division of the District of Alaska, and in the above-entitled court.

2. That the grand jury that attempted to find the indictment in the above-entitled case was chosen, summoned and impaneled in the above-entitled court during the vacation of the above-entitled court, and at no regular or special term of said court.

3. That at the time said alleged indictment was presented to the Judge of the above-entitled court, there was convened no regular or special term of said court, and no legal session or term of said court was then in convention.

4. That the pretended indictment in the above-entitled action does not charge the crime of which the defendant has been found guilty by the jury herein.

This motion is based upon the records and files in the above-entitled case and the affidavit of Key Pittman on file in said case, and heretofore presented in support of defendant's motion to dismiss the indictment.

J. P. HAUSER and  
PITTMAN & FINK,  
Attorneys for Defendant.

The Court, after hearing said motion in arrest of judgment, forthwith overruled the same, and the defendant took an exception thereto.

And immediately thereafter and on the same day, the Government being represented in court by John L. McGinn, Assistant United States Attorney, and the Defendant by his counsel, Key Pittman, Esq., said defendant filed, presented and made his said motion for a new trial, which said motion is in words and figures as follows:

*In the United States District Court, for the District of Alaska,  
Second Division.*

UNITED STATES OF AMERICA,	}
Plaintiff,	
vs.	
GUY N. STOCKSLAGER,	}
Defendant.	

#### Motion for New Trial.

Comes, now the defendant by his attorneys, J. P. Hauser and Pittman, and moves the Court to set aside

the verdict of the jury rendered herein and to grant a new trial upon the following grounds:

1. Insufficiency of the evidence to justify the verdict, and that it is against law.

There being absolutely no evidence of the intention of the defendant to utter and publish any forged instrument.

There being an insufficiency of evidence to prove an intent to defraud.

2. Error in law occurring at the trial and excepted by the defendant. Error of the Court in denying defendant's motion for a nonsuit made in open court in the presence of the jury and immediately after the prosecution had finished their case and rested.

Error of the Court in denying the defendant's objection to the introduction in evidence of the alleged forged check.

Error of the Court in refusing to grant and give to the jury in his charge, instructions marked numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the instructions presented to the Court before the argument and requested by defendant to be given to the jury

Error of the Court in instructing the jury that if they found beyond a reasonable doubt that the defendant had passed said check to Frank Johnson for the purpose of deceiving said Frank Johnson and obtaining money thereon, and the said Frank Johnson did accept said check, that then they must find that said check was so passed with the intention to defraud the said Frank Johnson.

The Court erred in his instructions to the jury in the defining to and instructing them as to the term "a reasonable doubt."

The Court erred in his instructions to the jury defining and instructing them as to what constituted the uttering and publishing of a forged instrument.

Error of the Court in denying the defendant's challenge to the jurors on the grounds that they had served upon a jury in said court, prior to this term and within one year last past.

This motion is based on the record and files in the above-entitled action.

J. P. HAUSER and  
PITTMAN & FINK,  
Attorneys for Defendant.

Service accepted and receipt to true copy admitted this 10th day of October, 1901.

JOHN L. MCGINN,  
Assistant United States District Attorney for District  
of Alaska, Second Division.

[Endorsed on the back as follows]:

No. 123. United States District Court, District of Alaska, Second Division. United States of America, Plaintiff, vs. Guy N. Stockslager, Defendant. Motion for New Trial. Filed in the office of the Clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. October 11, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.



And thereupon and forthwith the Court overruled said motion of defendant for a new trial, to which the defendant then and there took his exception.

In order to perpetuate the foregoing of record the defendant in due time presents this his bill of exceptions of the proceedings at the trial and prays the same may be settled and allowed.

KEY PITTMAN,  
Attorney for Defendant.

The foregoing bill of exceptions having been served and filed and presented for settlement within the time allowed by law, and extensions thereof made by orders duly entered of record, and the same being found true and correct, the same is hereby settled and allowed this 22d day of October, A. D. 1901, at Nome, District of Alaska.

Done in open court.

JAMES WICKERSHAM,  
Judge District Court, District of Alaska, Second Division.

[Endorsed]: Filed in the office of the Clerk of the United States District Court, Alaska, Second Division, at Nome, Alaska. October 22, 1901. H. G. Steel, Clerk. By H. C. Gordon, Deputy Clerk.

*In the United States District Court, for the District of Alaska,  
Second Division.*

UNITED STATES OF AMERICA	}
Plaintiff,	
vs.	}
GUY N. STOCKSLAGER,	
Defendant.	}

**Clerk's Certificate to Transcript.**

United States of America, }  
District of Alaska. } ss.

I, H. G. Steel, Clerk of the United States District Court for the District of Alaska, Second Division, do hereby certify that the foregoing is a true and correct transcript of the records and proceedings in the above-entitled cause in said United States District Court, as the same appear on file and of record in my office, at Nome, Alaska, together with the original writ of error and citation hereto attached.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Nome, Alaska, this 26th day of October, A. D. 1901.

[Seal] H. G. STEEL,  
Clerk, United States District Court, District of Alaska,  
Second Division.

By Harry C. Gordon,  
Deputy.

No. 1,407.

Nome, Alaska, Oct. 26, 1901.

Office of Clerk of U. S. Court,  
District of Alaska, Second Division.

Received from Key Pittman seventeen and 50-100 dollars account of transcript in care of U. S. vs. Stockslager, No. 123 Crim.

\$17.50.

H. G. STEEL,

Clerk of U. S. District Court.

Per REBER.

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[Endorsed]: No. 784. In the United States Circuit Court of Appeals for the Ninth Circuit Guy N. Stockslager, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court for the District of Alaska, Second Division.

Filed December 18, 1901.

F. D. MONCKTON,

Clerk.

